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FISCAL IMPACT STATEMENT

LS 7514

BILL NUMBER: HB 1428

NOTE PREPARED: Apr 30, 2009

BILL AMENDED: Apr 29, 2009

SUBJECT: Public Safety Matters.

FIRST AUTHOR: Rep. Tincher

FIRST SPONSOR: Sen. Waterman

BILL STATUS: Enrolled

FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
☐ **FEDERAL**

IMPACT: State & Local

Summary of Legislation: This bill has the following provisions:

Law Enforcement Training Board: The bill requires at least 9 affirmative votes for the passage of any matter put to a vote of the Law Enforcement Training Board. (Current law requires at least 11 affirmative votes for the passage of any subject matter put to a vote by the Board.)

Emergency Management Contingency Fund and Disaster Relief Fund: The bill specifies the manner of approval for allocations from the Emergency Management Contingency Fund, and it makes certain changes relating to who is eligible to receive financial assistance from the Disaster Relief Fund.

Homeland Security Foundation: It allows certain members of the Homeland Security Foundation to appoint certain designees for a specified meeting.

Amusement and Entertainment Permits: The bill provides that all amusement and entertainment permits expire one year after the date of issuance.

Sale of Firearms to Mentally Ill Persons: The bill requires the Division of State Court Administration to establish and administer an electronic system for:

- (1) receiving information that relates to certain individuals who may be prohibited from possessing a firearm; and
- (2) transmitting this information to the Federal Bureau of Investigation for inclusion in the federal National Instant Criminal Background Check System (NICS).

It provides that, if a court makes an adjudication or a finding concerning a person's mental health that may

disqualify the person from possessing a firearm, the court shall transmit certain information concerning the finding or adjudication to the Division of State Court Administration for transmittal to NICS. It also establishes a procedure by which a person who has been released from commitment or who has completed treatment may have the person's disqualification to possess a firearm removed.

Unlawful Manufacture or Sale of Police or Fire Insignias: The bill provides that it is a Class A misdemeanor for a person to knowingly or intentionally manufacture and sell or offer for sale:

(1) an official badge or a replica of an official badge that is used by a law enforcement agency or fire department of the state or a political subdivision of the state; or

(2) a document that purports to be an official employment identification that is used by a law enforcement agency or fire department of the state or a political subdivision of the state;

without the written permission of the chief executive officer of the law enforcement agency or fire department.

It makes the offense:

(1) a Class D felony if the person commits the offense with the knowledge or intent that the badge or employment identification will be used to commit the offense of impersonation of a public servant; and

(2) a Class B felony if the person commits the offense with the knowledge or intent that the badge or employment identification will be used to commit an offense involving weapons of mass destruction.

Firefighter Training: The bill provides that a full-time firefighter employed after December 31, 2009, must complete the training for Firefighter I and Firefighter II during the firefighter's first year of employment as a full-time firefighter. It allows the Education Board of the Division of Preparedness and Training of the Department of Homeland Security to grant six-month extensions of time to complete the training requirements for any reason. It requires a fire department to request the extension on behalf of a firefighter employed by the department, and it requires a fire department to report to the Board when a firefighter employed by the department has completed the training requirements.

Effective Date: Upon passage; July 1, 2009; January 1, 2010.

Explanation of State Expenditures: *Emergency Management Contingency Fund and Disaster Relief Fund:* The fund consists of money appropriated by the General Assembly. Under current law, money in the fund must be held in reserve and allocated for emergency management purposes upon recommendation of the director of the Department of Homeland Security (DHS), the approval of the Governor, and the Budget Committee. The proposal provides that an allocation of not more than \$100,000 can be approved by the director and the budget director. Allocations of more than \$100,000 must have the recommendation of the director and the approval of the Governor and the Budget Agency. This change is procedural and should not have a significant fiscal impact.

Amusement and Entertainment Permits: The bill provides that permits issued after June 30, 2009, expire one year after the date of issuance. This provision will not have a significant impact. Currently, permits expire after one year; however, the expiration date is the same for all permits. Providing that the permits expire after one year could allow more time for the processing of applications for renewal and inspections.

Sale of Firearms to Mentally Ill Persons - Submitting Information to NICS: The bill requires the Division of State Court Administration (DSCA) to receive and transmit information regarding people who are to be

included in the National Instant Criminal Background Check System that is managed by the Federal Bureau of Investigation (FBI). This will increase the workload of the DSCA. Increases in workload will depend on the number of notices sent to DSCA that are required to be forwarded to the FBI.

Division of State Court Administration System Establishment: The requirement that DSCA establish the electronic system presents no additional fiscal impact to the state. ISP and DSCA report that an electronic system that is designed to transmit information to NICS has already been planned and would be operated by the Judicial Technology and Automation Center (JTAC). Both DSCA and ISP will have access to the system and will be able to transmit the necessary information to NICS. The one-time start-up cost for the system is budgeted at \$184,000, and an additional \$45,000 would be required in order to allow ISP to interface and access the system. DSCA reports they will finance their part of the system from federal grants that DSCA has received for the Protection Order Registry program. ISP reports they will require additional resources to finance their part of the system.

Department of Corrections (DOC): Under the bill, DOC is required to transmit required information to DSCA for inclusion in NICS. Actual increases in workload will depend on the number of individuals who are involuntarily transferred to DMHA for treatment, but are expected to be minimal. DOC reports that information on the number of offenders who are involuntarily transferred to DMHA for treatment is not collected, but this occurs very infrequently.

The bill also provides for a NICS appeal process for individuals who were included on the database that would limit their ability to purchase or possess a handgun. Individuals who were involuntarily transferred from DOC to DMHA for treatment are authorized to appeal information included in the NICS database. If a person is no longer deemed a danger to others or to act in a manner dangerous to public safety, and the requested relief is not contrary to the public interest, DOC is required to transmit required information to DSCA for inclusion in the NICS. Actual increases in workload will depend on the number of individuals who petition DOC for an appeal, are granted a hearing, and are no longer deemed a threat.

Unlawful Manufacture or Sale of Police or Fire Insignias: There are no data available to indicate how many offenders may be convicted of manufacture or sale of a police or fire insignia, a Class A misdemeanor, or one of the enhanced felony offenses. County costs may increase if an offender is incarcerated in a county jail, or the state may incur costs for the incarceration of a felony offender. Fine revenue for both misdemeanor and felony offenses is deposited in the Common School Fund.

Depending upon mitigating and aggravating circumstances, a Class D felony is punishable by a prison term ranging from 6 months to 3 years or reduction to Class A misdemeanor, and a Class B felony is punishable by a prison term ranging from 6 to 20 years. The average expenditure to house an adult offender was \$20,287 in FY 2008. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the marginal cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner. The estimated average cost of housing a juvenile in a state juvenile facility was \$69,223. The average length of stay in DOC facilities for all Class D felony offenders is approximately 10 months and for all Class B felony offenders is approximately 3.7 years.

Firefighter Training: There is no current information available on the number of firefighters nor on the number of firefighters who will be hired after December 31, 2009. If the proposal results in 20 to 30 firefighters requesting certification with the DHS each year, then the DHS could probably implement these provisions within their existing level of resources. However, if the proposal results in more than 30 firefighters requesting certification, then the DHS will likely need to hire a person to process certifications.

Expenses associated with hiring an additional person are estimated at around \$35,000 annually. [The DHS reverted \$2.4 M in all funds in FY 2008, with a reversion of \$420,000 in state General Fund moneys.]

Law Enforcement Training Board and Homeland Security Foundation: Changes in the number needed to approve measures and allowing voting members to appoint designees should not have a fiscal impact.

Background - The funds and resources required above could be supplied through a variety of sources, including the following: (1) existing staff and resources not currently being used to capacity; (2) existing staff and resources currently being used in another program; (3) authorized, but vacant, staff positions, including those positions that would need to be reclassified; (4) funds that, otherwise, would be reverted; or (5) new appropriations. Ultimately, the source of funds and resources required to satisfy the requirements of this bill will depend upon legislative and administrative actions.

Sale of Firearms to Mentally Ill Persons: NICS is a system that was put in place in accordance with the federal Brady Gun Law. This database maintains a list of individuals who are considered ineligible for the purchase of handguns. In order to sell a handgun, handgun sellers/distributors in Indiana must run a purchase applicant's name through the NICS and receive approval from the NICS that the person is authorized to buy and possess a handgun. The penalty for violating the Brady Law in Indiana by a handgun seller/distributor is a Class A misdemeanor.

Firefighter Training: An individual whose employment by a fire department as a full-time firefighter begins after December 31, 2009, must complete the training for Firefighter I and Firefighter II during the firefighter's first year of employment. The fire department that employs a firefighter must report to the DHS director of the Division of Preparedness and Training when the firefighter has completed the training requirements.

The education board may grant a firefighter any number of 6-month extensions to complete the training. An extension must be requested by the fire department that employs the firefighter. An extension may be requested for any reason. The board must determine whether a firefighter receives an extension.

Explanation of State Revenues: *Unlawful Manufacture or Sale of Police or Fire Insignias:* If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a Class B or Class D felony is \$10,000, and the maximum fine for a Class A misdemeanor is \$5,000. Criminal fines are deposited in the Common School Fund.

If the case is filed in a circuit, superior, or county court, 70% of the \$120 criminal costs fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund. In addition, some or all of the document storage fee (\$2), automated record keeping fee (\$7), judicial salaries fee (\$18), public defense administration fee (\$3), court administration fee (\$5), judicial insurance adjustment fee (\$1), and the DNA sample processing fee (\$1) are deposited into the state General Fund.

Explanation of Local Expenditures: *Homeland Security Foundation:* Allowing a local emergency planning committee member to appoint a designee should have little, if any, impact on local expenditures.

Sale of Firearms to Mentally Ill Persons: The bill also provides for a NICS appeal process for individuals who were included on the database that would limit their ability to purchase or possess a handgun. Individuals are authorized to petition local courts to review information regarding their case. If a person is

no longer deemed a danger to others or to act in a manner dangerous to public safety, and the requested relief is not contrary to the public interest, the court is required to transmit the information to DSCA for inclusion in NICS. Actual increases in workload will depend on the number of individuals who petition the court for an appeal and are granted a hearing.

Unlawful Manufacture or Sale of Police or Fire Insignias: A Class A misdemeanor is punishable by up to one year in jail, and a felony defendant may be detained in a county jail prior to a court hearing which may increase local expenditures for jail operations. The average daily cost to incarcerate a prisoner in a county jail is approximately \$44.

Firefighter Training: The fire department that employs a firefighter must report to the DHS when the firefighter has completed the training requirements or when the firefighter needs an extension. In addition to administrative expenses associated with notifying the DHS, local units are also responsible for paying for training. The impact on local training expenses is unknown.

Explanation of Local Revenues: *Unlawful Manufacture or Sale of Police or Fire Insignias:* If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: The county general fund would receive 27% of the \$120 criminal costs fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of the criminal costs fee. In addition, several additional fees may be collected at the discretion of the judge and depending upon the particular type of criminal case.

State Agencies Affected: DOC; ISP; DSCA; JTAC; DHS.

Local Agencies Affected: Trial courts, local law enforcement agencies; counties; municipalities; and townships; local firefighting entities.

Information Sources: Indiana Sheriffs' Association; DOC; Mara Synder, DHS, 232-5341; Jeff Wardlow, ISP; Mary DePrez, DSCA; Patrick Hess, JTAC.

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